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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/385,651	08/27/1999	MICHAEL GREMINGER	31949	9479
116	7590	12/20/2004	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			FAULK, DEVONA E	
			ART UNIT	PAPER NUMBER
			2644	

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/385,651	GREMINGER, MICHAEL	
	<b>Examiner</b>	<b>Art Unit</b>	
	Devona E. Faulk	2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on amendment filed on 7/28/2004.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.  
 4a) Of the above claim(s) 2-11 and 24 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 12-23 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

1. During a telephone conversation with Robert Bodi (Reg. No. 48540) on 12/6/04 a provisional election was made without traverse to prosecute the invention of a hearing aid tuning device, claims 1, 12-23. Affirmation of this election must be made by applicant in replying to this Office action. Claim 24 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

2. Claims 2-11 have been cancelled.

### ***Priority***

3. The priority papers filed with the case does not indicate that it is a PCT case and furthermore there is no identification of the application number. The examiner request the applicant provide another copy of the priority document.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### ***Arrangement of the Specification***

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables

having more than 50 pages of text are permitted to be submitted on compact discs.) or

REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a).

"Microfiche Appendices" were accepted by the Office until March 1, 2001.)

(e) BACKGROUND OF THE INVENTION.

(1) Field of the Invention.

(2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.

(f) BRIEF SUMMARY OF THE INVENTION.

(g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).

(h) DETAILED DESCRIPTION OF THE INVENTION.

(i) CLAIM OR CLAIMS (commencing on a separate sheet).

(j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).

(k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

The examiner requests that the applicant submit a specification arranged in the above format.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claim 14** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 14 recites the claim language "further comprising a testing unit that test the audio storage medium in said playback unit". The recited claim language is misdescriptive.

Although testing is done, it is not clear that a testing unit is present.

6. **Claim 16** recites the limitation "said fitting arrangement" in line 2. There is insufficient antecedent basis for this limitation in the claim.

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7. **Claims 17-19 and 21** recite the limitation "said data input" in line 2 of claim 17, line 3 of claim 18, line 2 of claim 19, and line 2 of claim 21. There is insufficient antecedent basis for this limitation in the claim.

8. **Claim 15** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 recites that the computing unit further includes a decoding unit, implying that the decoding unit is internal to the computing unit but in the specification the decoding unit is on the computing unit (page 19, lines 11 and 18).

9. **Claims 17, 19 and 21** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 17, 19 and 21 all recite "said data input". Claims 19 and 20 recite "said data input is connected to a human input device" and a decoding unit which generates, form input data from said human input device, according to stored decoding tables, output data to an output of said decoding unit that is operationally connected with another input of said computing unit. The examiner is not clear as to what is meant by data input connected to a human input device. Additionally, in the specification or the figures the said decoding unit is not operationally connected with another input of said computing (See page 19).

*Claim Rejections - 35 USC § 102*

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. **Claims 1, 12,13, 16,17,20,22 and 23** are rejected under 35 U.S.C. 102(b) as being unpatentable over Moser et al. (WO 85/00509).

12. Regarding **claim 1**, Moser discloses a hearing device fitting device (Figure 1, Figure 16) comprising a computing device (308, Figure 16), connected on an input side with a connection for data entry (370, Figure 16) and on an output side with a connection for a hearing device (Figure 16) and further comprising an audio storage medium play-back unit having a control input connected to a computing device output (Figure 16) and having an audio output connectable to a loudspeaker unit input (310, Figure 16) (pages 28, line 27-page 30).

**Claim 12** claims the hearing device fitting device of claim 1, wherein said playback unit contains at least one audio storage chip. As stated above apropos of claim 1, Moser meets all elements of that claim. Moser teaches of the playback unit as a compact disc player (52). He further teaches that the information stored on the compact disc (54) is listed in a stored table of contents (page 18, lines 30-33). There is therefore inherently some sort of audio storage chip as claimed.

**Claim 13** claims the hearing device fitting device of claim 1, wherein said playback unit is a CD playback unit. As stated above apropos of claim 1, Moser meets all elements of that claim. Moser teaches of the playback unit as a compact disc player (302). He further teaches that the information stored on the compact disc (304) is listed in a stored table of contents (page 28, lines 28-35).

All elements of **claim 16** are comprehended by claim 1 (Figure 16; page 28, line 28-page 29).

All elements of **claim 17** are comprehended by claim 1(Figure 16).

**Claims 20 and 22** share common elements.

Regarding **claims 20 and 22**, Moser discloses a hearing device fitting arrangement (Figure 16) comprising an audio storage playback unit (302,304, Figure 16) including a control input having a selection input for selecting one of a plurality of storage segments on an audio storage medium(inherent); and an audio output; a loudspeaker operationally connectable to said audio output of said playback unit (310, Figure 16); and a computing unit (308)including a data input for data entry (370)by an individual carrying a hearing device to be fitted insitu; a hearing device output for operationally connecting to the hearing device (312); and an audio control output for operationally connecting to said control input of said audio storage medium playback unit(Figure 16); wherein said computing unit is adapted for automatically selecting the one of a plurality of storage segments depending on signals applied to said data input (page 28, lines 28-page 29).

The only difference between claim 20 and 22 is that claim 22 recites “ a hearing device output for operationally connecting to the hearing device for programming said hearing device” where claim 20 recites “a hearing device output for operationally connecting to the hearing device”. Moser meets the recited claim language (page 28, line 28-page 29).

13. **Claim 23** is rejected under 35 U.S.C. 102(e) as being unpatentable over Basseas (U.S. Patent 6,674,867).

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Regarding **claim 23**, Basseas discloses a method for fitting a hearing device insitu (insitu is defined as in its natural position) (Figure 1) comprising the steps of applying a hearing device to an individual; subjecting the individual to an audio test signal; having the individual appraise said audio test signal; and automatically selecting, in dependency of said appraising, a subsequent audio test signal (column 2, lines 36-48) (column 4, lines 5-column 5).

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devona E. Faulk whose telephone number is 703-305-4359. The examiner can normally be reached on 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Forester W. Isen can be reached on 703-305-4386. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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FORESTER W. ISEN  
SUPERVISORY PATENT EXAMINER